

FILED

OCT 07 2008

SPJL

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

DANE ALLEN YIRKOVSKY,

*

CIV 00-4138

Petitioner,

*

-vs-

MEMORANDUM OPINION
AND ORDER

UNITED STATES OF SOUTH DAKOTA,

*

Respondent.

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*

Dane Allen Yirkovsky, an inmate at the Federal Prison Camp in Yankton, South Dakota, has applied for a writ of habeas corpus under 28 U.S.C. § 2241. This is the second time that Petitioner has attempted to challenge his conviction and sentence under 28 U.S.C. § 2241. *See Yirkovsky v. Gonzales*, Civ. 07-4090 (D.S.D. 2007). Petitioner's previous § 2241 habeas was denied by this Court because he failed to show that his remedy under § 2255 is inadequate. *See id.* at Doc. 9 (Memorandum Opinion and Order). This second application for a writ of habeas corpus under § 2241 will be denied for the same reasons that his earlier application was denied. Petitioner's argument that he received ineffective assistance of counsel in his § 2255 post-conviction motion does not change the result. *See Abdullah v. Hedrick*, 392 F.3d 957, 963-964 (8th Cir. 2004) (rejecting claim that § 2255 inadequate due to ineffectiveness of § 2255 counsel because there is no constitutional right to effective counsel in post-conviction habeas proceedings). Accordingly,

IT IS ORDERED that the Application for Habeas Corpus Under 28 U.S.C. § 2241, Doc. 1, is denied with prejudice.

Dated this 7 day of October, 2008.

BY THE COURT:

Lawrence L. Piersol
Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

By *Linda M. Ziegler*, Deputy